

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

North Shore Gas Company)	
)	ICC Docket No. 11-0280
Proposed General Increase in Natural Gas Rates.)	
)	consolidated with
The Peoples Gas Light and Coke Company)	
)	ICC Docket No. 11-0281
Proposed General Increase in Natural Gas Rates.)	

REPLY BRIEF ON EXCEPTIONS

On behalf of

Interstate Gas Supply of Illinois, Inc.

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**REPLY BRIEF ON EXCEPTIONS OF
INTERSTATE GAS SUPPLY OF ILLINOIS, INC**

Interstate Gas Supply of Illinois, Inc. (“IGS”), by and through its attorneys, DLA Piper LLP (US), pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (“Commission”) (83 Ill. Admin. Code 200.830), respectfully submits its Reply Brief on Exceptions in the instant proceeding regarding the proposed general increase in electric rates of North Shore Gas Company (“North Shore”) and the Peoples Gas Light and Coke Company (“Peoples”) (collectively, the “Companies” or “Utilities”).

I.

INTRODUCTION

In its Brief on Exceptions, IGS identified specific, concrete action that the Commission should take to advance its policies favoring fair and efficient cost allocation and competitive market development. The steps IGS advocates would allow the competitive energy markets to operate more efficiently and effectively and would reduce anti-competitive behavior -- all to the benefit of Illinois consumers.

In the Companies’ last two rate cases, the main focus of IGS’s involvement has been improving the Companies’ flawed Choices For You program, a competitive program under which all residential and small commercial customers have the opportunity to choose their

natural gas supplier, rather than buy their supply from Peoples or North Shore. In the present case, in addition to pointing to the clear Commission direction given in the prior rate case, IGS developed extensive record evidence showing that the current structure of the Choices For You program -- in particular, with respect to administrative fees -- includes anti-competitive cross-subsidies.

Consistent with the Commission's policies favoring competition, IGS offered several straightforward steps to eliminate those cross-subsidies. (*See, e.g.* IGS Initial Brief at 3-4; IGS Reply Brief at 2-3.) Specifically:

- **Choices For You customers should not be charged for administrative costs they do not cause.** Currently, the Companies charge all customers (both sales and Choices For You customers) for administrative functions that support sales customers only. This creates an inappropriate, anti-competitive subsidy favoring sales customers paid for by Choices For You customers. In part due to the fact that the Companies do not track the cost information for each function supporting their proposed Administrative Fees, IGS recommends that all administrative fees applicable to sales and Choices For You customers be charged to both sales and Choices For You customers. IGS recommends that the Commission require the Companies to collect the more detailed information and present it in the Companies' next rate case.
- **The costs to administer the Choices For You program should be borne by all customers who have been given the option to participate in the program.** Charging all customers for Choices For You administration would be in line with the way in which similar costs are recovered, and is consistent cost-causation principles, since *all* customers who have the option to enroll in Choices For You benefit from that program.

(*See* IGS Reply Brief at 3.)

In short, the Commission should modify the Proposed Order to ensure that the Companies do not get a "free pass" on competitive issues; the Companies should not be allowed to continue allocating administrative fees in an anti-competitive manner. No party other than IGS filed Exceptions regarding administrative fees or challenged the extensive record evidence that supports the case for fair and accurate allocation of administrative fees, as explained in

IGS's Brief on Exceptions. Thus, IGS continues to urge the Commission to unlock the benefits of choice for all eligible mass market customers by equitably allocating administrative fees according to cost causation and reception of benefits as outlined in IGS's Brief on Exceptions and proposed replacement language. (*See, e.g.*, IGS Brief on Exceptions at 9-19; Attachment A to IGS Brief on Exceptions at 7-9, 12-14.)

The second focus of IGS's attention in this proceeding has been on warranty product issues. Specifically, IGS has explained that the Companies are improperly subsidizing of their affiliate, Peoples Energy Home Services ("PEHS"), in support of PEHS's Pipeline Protection Program ("PPP") warranty product, and improperly discriminating against companies that are unaffiliated with the utilities that participate in the warranty market. The Proposed Order recommends an investigation into the Companies' warranty-related practices -- a proposal that IGS supports. (*See, e.g.*, IGS Brief on Exceptions at 5-6.) In addition to IGS, the Companies and Staff filed Exceptions on this subject.

Staff has proposed replacement language that would make the mandate for an investigation clearer and would provide a firm timetable. IGS has no objection to Staff's suggested language, which could be used together with the replacement language that IGS provided to make it clear that the scope of the investigation will include issues raised by Staff and IGS during the proceeding.

In contrast, the companies continue to argue that the Companies' relationship with PEHS does not require further investigation. The Companies' position is contradicted by an overwhelming body of evidence which firmly establishes that an investigation is, in fact, necessary and appropriate.

V.

OPERATING EXPENSES

C. Contested Issues

8. Revenues

b. Other Issues Relating to PEHS and PEPP, Including Staff Request for Investigation

In its Brief on Exceptions, IGS supported the Proposed Order's recommendation for an investigation of the Companies' warranty-related practices. (*See* Proposed Order at 96.) IGS maintains that position.

Staff proposes additional clarifying language further explaining the background and mechanics of the investigation. (*See* Staff Brief on Exceptions at 12.) Of note, Staff indicates that the Companies, rather than the Commission, should initiate the investigation docket -- just as in the Nicor Gas's 2008 Rate Case Order (ICC Docket No. 08-0363), the Commission required Nicor to initiate the investigation regarding its interaction with its affiliates (ICC Docket No. 09-0301). (*See* Staff Brief on Exceptions at 12; ICC Docket No. 08-0363, Final Order dated March 25, 2009 at 183-184; ICC Docket No. 09-0301, Nicor Gas Petition dated July 1, 2009 at 1-2.) Staff also recommends language specifying the current state of the Companies' affiliate agreement and recognizing that certain jurisdictional issues must be addressed. (*See* Staff Brief on Exceptions at 12.)

IGS has no objection to Staff's suggested language, which could be used together with the replacement language that IGS provided, to make it clear that the scope of the investigation will include issues raised by Staff and IGS during the proceeding. (*See* IGS Brief on Exceptions at 5-6; Attachment A to IGS Brief on Exceptions at 4.)

Rather than embrace the opportunity to revise their practices, the Companies request that the Commission ignore the evidence and allow the Companies to avoid scrutiny for past, present, or future anti-competitive interactions with PEHS. (*See, e.g.*, NS-PGL Brief on Exceptions at 61; NS-PGL Exceptions to the Proposed Order at 100-101 (Exception 14).) In essence, the Companies seek to frame their affiliate support issues as a financial issue, which can be corrected by making an adjustment to its rate schedules. (*See* NS-PGL Brief on Exceptions at 61.) However, as Staff and IGS both pointed out through a voluminous evidentiary record, there are serious structural and operational issues regarding the services the Companies provide to PEHS in support of PPP. Highlights of those issues include:

- **Access of non-affiliates to non-tariffed services.** By not providing non-affiliates access to certain unique opportunities and services, such as access to the utility bill and solicitation on moving calls, the Companies provide their affiliate with a unique marketing advantage that harms the competitive market. (*See, e.g.*, IGS Ex. 2.0 at 24:587-27:661; IGS Cross Exhibits 1 and 2; IGS Initial Brief at 4, 6-9; IGS Reply Brief at 9; *see also* Tr. 770:10-14 (Staff witness Mr. Sackett: “So I think that the issue of access to those services, billing services, repair services and solicitation would be more appropriately addressed in that [investigation] proceeding and I do intend to pursue that in that proceeding.”).)
- **Performance under existing agreements.** Staff presents persuasive arguments that the Companies do not have an Affiliate Interest Agreement (or similar document) in place that authorizes the Companies to provide multiple types of services to PEHS, including solicitation services. In addition, Staff has presented evidence that the Companies have failed to act properly under existing agreements, including not billing PEHS for significant expenses. (*See, e.g.*, Staff Initial Brief at 38-46, 50-51; Staff Ex. 9.0 at 40:900-910 (noting that the Companies had represented to the Commission that warranty products would be a utility service but instead worked through an affiliate without notifying the Commission).)

In its Brief on Exceptions, IGS pointed to the substantial record evidence that supports the Commission taking specific corrective action in *this* proceeding. (*See, e.g.*, IGS Brief on Exceptions at 5; IGS Ex. 2.0 at 24:587-27:661; IGS Cross Exhibits 1 and 2; IGS Initial Brief at 4, 6-9; IGS Reply Brief at 9.) That evidence fully rebuts the Companies’ suggestion that the Commission essentially *do nothing* in response to the ongoing market abuses. In any event, in

absence of specific corrective action in this proceeding, IGS continues to accept the Proposed Order's direction for the initiation of an investigation, with the understanding that that the investigation will cover all warranty-related issues identified by Staff as well as the additional warranty-related issues identified by IGS, consistent with Mr. Sackett's testimony. (*See* Tr. 770:10-14 ("So I think that the issue of access to those services, billing services, repair services and solicitation would be more appropriately addressed in that [investigation] proceeding and I do intend to pursue that in that proceeding.").)

Contrary to the Companies' assertion, the evidence in this proceeding establishes the market abuses -- raised by both Staff and IGS -- cannot be resolved simply by making rate schedule adjustments, much less by sitting idly by, as the Companies suggest. (*See* NS-PGL Brief on Exceptions at 61; NS-PGL Reply Brief at 51-53; NS-PGL Initial Brief at 82.) As Staff witness Mr. Sackett concisely concluded: "the Companies still do all the work but the profits are going to the affiliate." (Staff Ex. 9.0 at 40:900-910.) The evidence points to structural and operational issues that require further investigation, as properly recognized by the Proposed Order. (*See* Proposed Order at 96.)

IGS respectfully requests that the Commission reject the Companies' exceptions and proposed replacement language, and instead revise the Proposed Order as recommended by both IGS and Staff.

XI.

TRANSPORTATION ISSUES

In its Brief on Exceptions, IGS explained that the Proposed Order had the effect of giving the Companies a "free pass" for their anti-competitive treatment of administrative charges, and recommended that the Commission order the Companies to discontinue their practice of charging

Choices For You customers for costs that they do not cause and from which they do not benefit.

(*See* IGS Brief on Exceptions at 3.)

IGS demonstrated the Companies currently charge Choices For You customers for costs that they do not cause. Specifically:

- The Companies double charge Choices For You customers for administrative expenses. The Companies charge all customers an administrative fee, and then charge Choices For You customers another administrative fee for the same or similar services. (*See, e.g.*, IGS Cross Ex. 11; Tr. 674:9-677:12, 678:5-21; IGS Ex. 1.0 at 42:1000-43:1015; IGS Initial Brief at 12-13; IGS Reply Brief at 11-12.)
- The Companies charge Choices For You customers for costs they do not cause. It is undisputed that Choices For You customers do not cause non-commodity uncollectable costs, but these costs nonetheless are assigned to Choices For You customers. (*See, e.g.*, IGS Cross Exs. 17 and 18; IGS Ex. 1.0 at 38:906-918, 39:944-40:966; IGS Ex. 2.0 at 20:471-482; IGS Initial Brief at 13-14; IGS Reply Brief at 11.)

In sum, the Companies' current practices are anti-competitive and violate basic cost causation principles that the Commission has repeatedly endorsed. (*See, e.g.*, IGS Initial Brief at 2-3; ICC Docket Nos. 09-0166/-0167 (cons.) at 197, 198, 211 (summarily approving proposals due to being "consistent with cost causation principles"); ICC Dockets 07-0241/-0242 (cons.), Final Order dated February 5, 2008 Order at 163-4, 182 (noting policy of assigning costs of programs to customers that benefit from the programs); *see also* Tr. 653:17-654:19; IGS Ex. 1.0 at 34:811-35:827.)

As IGS has detailed, all eligible customers benefit from the being provided the option to be able switch suppliers at will. (*See, e.g.*, IGS Brief on Exceptions at 16; *see also id.* at 13-15 (quoting Companies witness Mr. McKendry discussing benefits to all customers).) As a result, cost-causation principles support assigning the costs associated with Choices For You to all customers. IGS also established that Choices For You customers currently pay for a wide range of costs that they either do not cause or separately pay for through the Choices For You

administrative fee which, alternatively, should be credited to Choices For You customers. (*See, e.g.,* IGS Brief on Exceptions at 9-11.) IGS reaffirms the Exceptions and replacement language provided with its Brief on Exceptions. (*See* IGS Brief on Exceptions at 12; Attachment A to IGS Brief on Exceptions at 7-9, 12-14.)

XII.

CONCLUSION

IGS consistently has urged the Commission to make a few simple fixes to the Choices For You program to greatly ameliorate the identified imbalances in the competitive market. (*See, e.g.,* IGS Initial Brief at 26; IGS Reply Brief at 18.) Accurate cost allocation, consistent with long-standing Commission policy, requires fair and accurate allocation of administrative fees. Similarly, non-discriminatory treatment of companies participating in the warranty product market requires that companies that are not affiliated with the utilities should have access to billing and solicitation services provided by the utilities to their affiliate.

IGS supports Staff's clarifications that make minor but important changes to the Proposed Order regarding the investigation into the Companies' warranty-related practices, provided that IGS's proposed replacement language is included as well. With the changes that IGS recommended in its Brief on Exceptions and Staff's clarification, the Commission will be in a position to make the few simple fixes to greatly enhance competitive markets in the Companies' service territories.

WHEREFORE, IGS respectfully requests that the Commission enter an Order:

1. Requiring the Companies to collect Choices For You administrative fees from all customers through base rates;
2. In the alternative, requiring the Companies to undertake detailed cost-causation analysis of the administrative fees to all customers and the Gas Transportation Services allocation factors;
3. Continuing to accept Staff's proposal to open an investigation into the Companies' practices supporting their affiliate and its warranty product, including all issues that IGS and Staff identified associated with warranty-related practices and with Staff's proposed changes; and
4. Granting any additional relief that the Commission determines to be in the interests of justice.

Respectfully submitted,

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